

US EPA ARCHIVE DOCUMENT

EPA DRAFT TITLE VI GUIDANCE MISSES MARK

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In the real world, all communities are not created equal. Some are more equal than others. If a community happens to be poor, powerless, or inhabited largely by people of color, it receives less protection than the affluent white suburbs. Congress enacted the Civil Rights Act of 1964, Title VI, which prohibits recipients of federal financial assistance from discriminating against persons on account of race, color, or national origin. This law covers the U.S. EPA, established in 1970, and all fifty states. The agency issued Title VI implementing regulations in 1973 and amended them in 1984.

Beginning in 1992, communities began filing Title VI complaints. Presidents Clinton signed the Environmental Justice Executive Order 12898 in 1994. By 1997, over two-dozen Title VI complaints had been filed with the EPA, prompting the agency to begin drafting Title VI guidance. It also established a national advisory committee, under the Federal Advisory Committee Act or FACA, to study the problem. In June 2000, after eight years and 45 complaints (including the original five complaints filed in the early 1990s), EPA issued its Draft (Revised) Title VI Guidance.

The draft guidance can be described in two words—"total disaster." The Interim National Black Economic and Environmental Justice Coordinating Committee (INBEEJCC), a network of over 300 black organizations, says the draft guidance fails to recognize that the concentration of waste sites and toxic facilities in communities of color is a form of racial discrimination that violates the civil rights of people of color who live in these communities, creates a difficult and highly technical standard of "proof" this is biased in favor of state environmental protection agencies and the industries that they

regulate and grant permits, fails to recognize that any justification that can be offered by a state environmental agency must be limited to the substantial, legitimate interest of that agency, excludes communities of color from the appeal process—yet allowing states several appeal avenues, including appealing to an administrative judge.

Lay and legal environmental justice and civil rights advocates alike echo this sentiment. Jerome Balter, an attorney with Public Interest Law Center of Philadelphia and attorney for the plaintiffs in the Chester, Pa. Title VI lawsuit—a case that made its way to the U.S. Supreme Court—says the EPA should withdraw the draft guidance. Balter fears it would be used as an “incorrect legal basis for determining compliance or violation of environmental civil rights and would compound the error by using uncertain data and uncertain science.”

By failing to recognize that African American and other people of color communities have been illegally targeted for toxic industries, the EPA has made a fundamental error and abandons established civil rights law—rights that were won in the streets, jails, and in the courts. The federal EPA should be in the business of protecting everyone and enforcing the law without regard to race, color, or national origin—rather than raising the legal bar and making it next to impossible to prove discrimination.